

Charles D. Marshall (State Bar No. 236444)
MARSHALL LAW FIRM
2121 N. California Blvd., Suite 290
Walnut Creek, CA 92596
Telephone: (925) 575-7105
Facsimile: (855) 575-7105
cdm@marshall.law.firm.com

Attorney for Plaintiff
RON DAVIS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

RON DAVIS, an individual, on behalf of himself and all others similarly situated,

Plaintiff.

VS.

VISA, Inc., a Delaware corporation,

Defendant.

Case No. 3:13-cv-5125-CRB

CLASS ACTION

**ORDER PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING THE
SETTLEMENT CLASS, PROVIDING
FOR NOTICE AND SCHEDULING
ORDER**

1 WHEREAS, Plaintiff¹ and Defendant in the Action entitled *Davis v. VISA Inc.*, No. 3:13-
2 cv-5125-CRB (N.D. California) and have entered into a Settlement Agreement, filed October 27,
3 2014, after arms-length settlement discussions;

4 AND, WHEREAS, the Court has received and considered the Settlement Agreement,
5 including the accompanying exhibits;

6 AND, WHEREAS, Plaintiff has made an application for an order preliminarily approving
7 the settlement of this Action, and for its dismissal with prejudice upon the terms and conditions set
8 forth in the Settlement Agreement;

9 AND, WHEREAS, the Court has reviewed the application for such order, and has found
10 good cause for same.

11 NOW, THEREFORE, IT IS HEREBY ORDERED:

12 **A. The Settlement Class is Conditionally Certified**

13 1. Pursuant to Federal Rule of Civil Procedure 23, and for settlement purposes only,
14 the Court hereby certifies the following Class:

15 All Persons in the United States who (1) maintain a VISA standard, VISA
16 Rewards, or VISA premium branded credit card offering an automobile rental
17 collision damage waiver benefit, (2) who, prior to November 6, 2014, made a
18 claim to VISA for such benefit based on an incident involving a Zipcar (the
19 “Claim”), and (3) whose claims were denied because the vehicle involved was a
20 Zipcar.

21 Attached to the Settlement Agreement as Exhibit C is a list of all Persons who (based on a review
22 of records maintained by Defendant) qualify as potential members of the Settlement Class under
23 the definition set forth above. Excluded from the Settlement Class are the following: (a) all
24 Persons who file timely Requests for Exclusion, (b) all Persons who had their claims discharged in
25 bankruptcy, finally adjudicated on the merits or otherwise released against Defendant, (c) the

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27 ¹ All capitalized terms herein have the same meanings as set forth in the Parties’ Settlement
28 Agreement unless otherwise specifically defined.

1 Defendant, IINA, and any respective parent, subsidiary, affiliate, or control person of either, as
2 well as their officers, directors, agents, servants, or employees, (d) any judge presiding over this
3 Action, and (e) the immediate family members of any such Person(s).

4 2. With respect to the Class and for settlement purposes only, the Court preliminarily
5 finds the prerequisites for a class action under Federal Rules of Civil Procedure 23(a) and (b)(3)
6 have been met, including: (a) numerosity; (b) commonality; (c) typicality; (d) adequacy of the
7 class representative and Class Counsel; (e) predominance of common questions of fact and law
8 among the Class for purposes of settlement; and (f) superiority.

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10 3. Pursuant to Federal Rule of Civil Procedure 23, the Court hereby appoints Plaintiff
11 Ron Davis as the class representative.

12 4. Having considered the factors set forth in Federal Rule of Civil Procedure 23(g)(1),
13 the Court hereby appoints the Marshall Law Firm as Class Counsel.

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15 **B. The Settlement Agreement is Preliminarily Approved and Final Approval
Schedule Set**

16 5. The Court hereby preliminarily approves the Settlement Agreement and the terms
17 and conditions of settlement set forth therein, subject to further consideration at the Fairness
18 Hearing (or “Final Approval Hearing”) described below.

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20 6. The Court has concluded a preliminary assessment of the fairness, reasonableness,
21 and adequacy of the Settlement Agreement, and hereby finds that the settlement falls within the
22 range of reasonableness meriting possible final approval. The Court therefore preliminarily
23 approves the proposed settlement as set forth in the Settlement Agreement.

7. Pursuant to Federal Rule of Civil Procedure 23(e), the Court will hold a Fairness Hearing on March 20, 2015 at 10:00 a.m., in the Courtroom of the Honorable Charles R. Breyer, United States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 6 – 17th floor, San Francisco, CA 94102 for the following purposes:

a. finally determining whether the Class meets all applicable requirements of Federal Rules of Civil Procedure 23, and this the Class should be certified for the purposes of effectuating the settlement:

b. determining whether the proposed settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable and adequate and should be approved by the Court;

c. considering the application of Class Counsel for an award of attorney's fees and reimbursement of expenses, as provided for under the Settlement Agreement;

d. considering the application of Plaintiff for a class representative incentive award, as provided for under the Settlement Agreement;

- e. considering whether the Court should enter a Final Settlement Order and Judgment;

f. considering whether the release of the Released Claims as set forth in the Settlement Agreement should be provided;

g. ruling upon other matters as the Court may deem just and appropriate.

8. The Court may adjourn the Fairness Hearing and later reconvene such hearing without further notice to Class Members.

1 9. The Parties may further modify the Settlement Agreement prior to the Fairness
2 Hearing so long as such modifications do not materially change the terms of the settlement
3 provided thereunder. The Court may approve the Settlement Agreement with such modifications
4 as may be agreed to by the Parties, if appropriate, without further notice to Class Members.

5 10. All papers in support of the final approval of the settlement must be filed with the
6 Court and served *at least 14 days prior* to the Fairness Hearing. All papers in support of any
7 application for an award of attorneys' fees and expenses and/or class representative incentive
8 awards must be filed with the Court and served *at least 14 days prior* to the deadline for objecting
9 to the settlement.

11 **C. The Court Approves the Form and Method of Class Notice**

12 11. The Court approves, as to form and content, the proposed Claim Form (which is
13 attached as Exhibit A to the Settlement Agreement) and the proposed Notices (which are attached
14 as Exhibit B to the Settlement Agreement). The Parties may further modify the Claim Form and
15 the Notices without prior Court approval so long as such modifications do not materially change
16 their content, format, or terms.

17 12. The Court finds that the distribution of the Notices substantially in the manner and
18 form set forth in the Settlement Agreement meets the requirements of Federal Rule of Civil
19 Procedure 23 and due process, is the best notice practicable under the circumstances, and shall
20 constitute due and sufficient notice to all persons entitled thereto.

21 13. The Court approves the designation of Defendant, through IINA and Allianz
22 Global Assistance, as the Court appointed Claims Administrator for the settlement. The Claims
23 Administrator and/or Plaintiff's Counsel (as the Parties deem appropriate) shall disseminate Class
24 Notice and supervise and carry out the notice procedure, the processing of claims, and other
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1 administrative functions, and shall respond to Class Member inquiries, as set forth in the
2 Settlement Agreement and this Order under the direction and supervision of the Court.

3 14. The Court directs Plaintiff's counsel to establish a Settlement Website in
4 accordance with the applicable provisions of the Settlement Agreement, making available copies
5 of this Order, Class Notice, Claims Forms that may be downloaded and submitted by email or
6 mail, the Settlement Agreement and all Exhibits thereto and such other information as may be of
7 assistance to Class Members or required under the Settlement Agreement. The Class Notice and
8 Claims Forms shall be made available to Class Members through the Settlement Website on the
9 date notice is first published and continuously thereafter through the Effective Date.

10 15. The costs of Notice, processing of claims of Class Members, creating and
11 maintaining the Settlement Website, and all other Claim Administrator and Notice expenses shall
12 be paid by Defendant in accordance with the applicable provisions of the Settlement Agreement.

13 **D. Procedure for Class Member Participation in the Settlement**

14 16. The Court approves the Parties' proposed Claim Form. Any Class Member who
15 wishes to participate in the settlement shall complete a Claim Form in accordance with the
16 instructions contained therein and submit it to the Claims Administrator no later than 90 days after
17 the Fairness Hearing, which date will be specifically identified in the Claim Form. Such deadline
18 may be further extended without notice to the Class by written agreement of the Parties.

19 17. The Claims Administrator shall have authority to accept or reject claims in
20 accordance with the Settlement Agreement.

21 18. Any Class Member may enter an appearance in the Action, at his, her or its, own
22 expense, individually or through counsel who is qualified to appear in the jurisdiction. All Class
23 Members who do not enter an appearance will be represented by Class Counsel.

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1 **E. Procedure for Requesting Exclusion from the Class**

2 19. All Class Members who do not timely exclude themselves from the Class shall be
3 bound by all determinations and judgments in the Action concerning the settlement, whether
4 favorable or unfavorable to the Class.

5 20. Any person or entity falling within the definition of the Class may request to be
6 excluded from the Class. Any such person or entity must submit a timely request for exclusion in
7 accordance with the directions set out in the Notices, postmarked or delivered no later than 45
8 days after the Notice Date, the date for which will be specifically identified in the Notice.
9 Requests for exclusion purportedly filed on behalf of groups of persons/entities are prohibited and
10 will be deemed to be void. The written request for exclusion must include (1) the potential Class
11 Member's name and address, (2) a statement to the effect that the person or entity understands that
12 they are a potential Class Member, (3) unambiguously request to be excluded from the class, and
13 (4) be signed by the potential Class Member.

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15 21. Any Class Member who does not send a timely, signed request for exclusion will
16 be deemed to be a Class Member for all purposes and will be bound by all judgments and further
17 orders of this Court related to the settlement of this Action and by the terms of the Settlement
18 Agreement, if finally approved by the Court. All persons or entities who submit valid and timely
19 requests for exclusion in the manner set forth in the Settlement Agreement shall have no rights
20 under the Settlement Agreement and shall not be bound by the Settlement Agreement or the Final
21 Judgment and Order.

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23 22. A list reflecting all requests for exclusions shall be filed with the Court by the
24 Parties at or before the Fairness Hearing.

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1 **F. Procedure for Objecting to the Settlement**

2 23. Any Class Member who desires to object to either the settlement, the application
3 for attorney' fees and expenses, or the application for a class representative incentive award must
4 file with the Clerk of this Court, as provided in the Notice, a notice of the objection(s) and the
5 grounds for such objections, together with all materials that the Class Member requests that the
6 Court consider in connection with their objection, no later than 45 days after the Notice Date, the
7 date for which will be specifically identified in the Notices.

9 24. All objections must include a reference to *Davis v. VISA Inc.*, No. 3:13-cv-5125-
10 CRB; the Class Member's full name and current address; a statement explaining why he or she
11 believes himself or herself to be a Class Member; the specific grounds for the objection; all
12 documents or writings that the Class Member requests that the Court consider in connection with
13 the objection; the name and contact information of any and all attorneys representing, advising, or
14 in any way assisting the objector in connection with the preparation or submission of the objection
15 or who may profit from the pursuit of the objection (the "Objecting Attorneys"); and a statement
16 indicating whether the objector intends to appear at the Fairness Hearing (either personally or
17 through counsel). If a Class Member or any Objecting Attorneys has objected to any other class
18 action settlement where the objecting Class Member or the Objecting Attorneys asked for or
19 received any payment in exchange for dismissal of the objection, or any related appeal, without
20 any modification to the settlement, then the objection must include a statement identifying each
21 such case by full case caption.

24 25. Attendance at the Fairness Hearing is not necessary; however, any Class Member
25 wishing to be heard orally with respect to approval of the Settlement Agreement, the applications
26 for attorney's fees and reimbursement of expenses, or the application for the class representative
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1 incentive award must provide written notice of their intention to appear at the Fairness Hearing no
2 later than 45 days after the Notice Date, the date for which will be specifically identified in the
3 Notices. Class Members who do not oppose the settlement, the application for attorney's fees and
4 reimbursement of expenses, or class representative incentive awards, need not take any action. A
5 Class Member's failure to submit a timely written objection in accordance with the procedures set
6 out in this order and in the Notices waives any right the Class Member may have to object to the
7 settlement, attorney's fees and expenses, or the class representative incentive award, to appear at
8 the Fairness Hearing, or to seek other review of the Final Judgment and Order.
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10 IT IS SO ORDERED.

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12 DATED: December 12, 2014



13 THE HONORABLE CHARLES R. BREYER
14 UNITED STATES DISTRICT JUDGE
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